IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 2696 of 2007(U)

---

PETITIONER:

---

P.M.JOHNSON, PONNAMATTAM,
NEAR KALARIKKAL TEMPLE, KOTTOOLI P.O.,
CALICUT-6.

BY ADV. SRI.A.SUDHI VASUDEVAN
SRI.JOJO VARGHESE

RESPONDENTS:

---

1. THE CORPORATION OF CALICUT,
REPRESENTED BY ITS SECRETARY,
CALICUT.

2. TOWN PLANNING OFFICER,
CORPORATION OF CALICUT, CALICUT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**PIUS C.KURIAKOSE, J.**

**----------**

**W.P.(C)NO. 2696 of 2007**

**----------**

**Dated this 25th day of January, 2007**

**JUDGMENT**

The petitioner constructed a residential house on the strength of Ext.P2 building permit issued by the first respondent Corporation. The construction was completed within the time mentioned in the permit itself. Now on 26.10.2006, the Corporation issued Ext.P6 notice requesting the petitioner to remove the construction on the reason that plan had been submitted and building permit obtained in respect of the property proposed to be acquired for green city and on the reason of not showing the correct location of the proposed building. To Ext.P6, the petitioner submitted Ext.P7 detailed reply. Thereafter, the Corporation issued Ext.P8 notice to the petitioner directing the petitioner to appear before the Corporation on 29.12.2006 for a hearing on the issue as to whether the plan and permit which were issued by the Corporation in respect of the house already constructed should be cancelled. It is impugning Exts.P6 and P8 that this writ petition has been filed by the petitioner. Exts.P11 and P12 are

two other documents placed on record by the petitioner. In Ext.P11 the petitioner refers to the judgment in **Hassan v. Corporation of Calicut ( 1996 (2) KLT 839**) which lays down that unless and until notification under Section 4 (1) of the Land Acquisition Act is issued, it cannot be said that the given land is under acquisition and that if the land is not under acquisition, the local authority is bound to issue building permit. Ext.P12 is is yet another application submitted by the petitioner wherein the petitioner has highlighted that as per Rule 153 (4) of the Kerala Municipality Building Rules the responsibility for mistakes in the plan will be that of the architects or draftsman who prepared the plan and not that of the owner of the building. Along with Ext.P12, the petitioner has submitted a revised plan and seeks permission to substitute the existing plan by the revised site plan and key plan by the revised site plan and key plan.

2. Heard Sri.Sudhi Vasudevan, the learned counsel for the petitioner and Sri.M.P.Prabhanandan, the learned Standing Counsel for the respondent Corporation. The counsel for the petitioner would invite my attention to the judgment of this

court in Hassan's case ( supra) . He would also invite my attention to Ext.P10 certificate issued by the Village Officer. The learned Counsel submitted that building has not been constructed on land which is proposed to be acquired for green city and that there is no pending proceeding for acquisition at all. The principles laid down in Hassan's case is applicable in view of the conceded position that no notification under Section 4 of the Land Acquisition Act had been issued in respect of the petitioner's property. The counsel refers to Rule 16 of the Kerala Building Rules and submits that even in Exts.P6 and P8, the Corporation has not made out any error or mistake or misrepresentation of such a magnitude as to warrant revocation of the permit. Revocation of the permit, according to the learned counsel, is not contemplated at a stage where the construction is over. This is a case where the construction is over and the building has been assessed to property tax also. The counsel also submits that even if the petitioner had shown the location of the building correctly and then also in view of the principles laid down in Hasan's case, the Corporation should have been obliged to issue permit. The learned Standing Counsel for the Corporation would submit that since Exts.P11 and P12

have been submitted by the petitioner, the Corporation can be directed to take a decision on the issue in the light of the grounds raised in the writ petition after hearing the petitioner.

It is doubtful whether the powers under Section 16 for revocation of the permit can be invoked by the Corporation after the construction of the building is completed and the building has been assessed to property tax and is occupied by the person who constructed the same. I will notice that the submissions addressed by Sri.Sudhi Vasudevan, the learned counsel for the petitioner on the basis of the judgment of this court in Hassan's case(supra) has considerable force in the light of Ext.P10 certificate issued by the Local Village Officer. The further submission of the learned counsel on the basis of Rule 153 (1) that if at all anybody is to blame for the mistake of showing the location of the building wrongly, the responsibility for the mistake is of the person who prepared the plan and not the petitioner also has some force. However, I do not propose to decide the issue finally. Exts.P11 and P12 are pending before the Corporation. The Corporation will take up Ext.P12 first , hear the petitioner, consider the grounds raised in the writ petition and my observations earlier and take a decision on the

question of substituting the existing plan and key plan by the revised ones submitted by the petitioner. The petitioner will be informed of the decision taken on Ext.P12. The respondent will ensure compliance with the above directions within two months.

**PIUS C.KURIAKOSE**
**Judge**

dpk